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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th December 2013

No. 13743—II/I-(B)-77/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st October 2013 in Industrial Dispute Case No. 20 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s Lyka Labs. Ltd. and its Sales Promotion Employer Shri Puspak Kumar Pal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 20 OF 2008

Dated the 1st October 2013

*Present :*

Shri P. K. Ray, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of M/s Lyka Labs. Ltd.,  
Lyka Hetero Health Care Ltd.,  
At 101, Shivashakti Industrial Estate,  
Andheri, Kurla Road, Marol,  
Andheri (East), Mumbai-400059,  
Maharashtra.

.. First Party—Management

And

Their workman  
Shri Puspak Kumar Pal,  
C/o L. P. Pal,  
Basanti Lane,  
At/P.O. Bangalisahi,  
Dist. Cuttack.

.. Second Party—Workman

*Appearances :*

For the First Party—Management	.. Shri Amar Kumar Sahoo, Advocate
For the Second Party—Workman	.. Shri S. K. Mishra, Advocate

## A W A R D

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the 'Act') on a reference made by the Labour & Employment Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 4315—II/I-(B)-77/2007-LE., dated the 9th April 2008 with the following Schedule:—

“Whether the dismissal of Shri Puspak Kumar Pal from service with effect from the 31st October 2006 by the management of M/s Lyka Labs. Ltd., 101, Shivashakti Industrial Estate, Andheri, Kurla Road, Marol, Andheri (East), Mumbai (Maharashtra) is legal and/or justified ? If not, to what relief Shri Pal is entitled ?”

2. This case instituted on a reference made by the Government of Odisha, Labour and Employment Department vide its Order No. 4315, Dt. 9-4-2008 relates to the adjudication of the legality of the dispute regarding dismissal of the second party workman, a Sales Promotion Employee from his service by the management of M/s Lyka Labs. Ltd., 101, Shivashakti Industrial Estate, Andheri, Kurla Road, Marol, Andheri (East), Mumbai, Maharashtra with effect from the 31st October 2006.

3. The claim of the second party workman is that he initially joined as a medical representative in M/s. Lyka Labs. Ltd. with effect from 13th September 1993 and posted at Cuttack. Subsequently his service was confirmed with effect from the 13th March 1994 and he discharged his duty to the best satisfaction of his authority without any scar or blemishes for a period of thirteen years. In the year 2002 the management entered into joint venture with another company namely M/s Hetro Drugs Ltd. and a third company called as M/s Lyka Hetro Drugs Ltd. was formed. In the circumstances, all the medical representatives enmass requested the said new company for their transfer to the existing service conditions. As the management did not agree the employees represented by Federation of Medical Representatives Associations of India and All India Lyka Workers Union jointly filed a complaint ULP No. 554/2002 before the Industrial Court, Mumbai. During the pendency of the said case as the second party workman received an offer from M/s Lyka Hetro Health care for fresh appointment as the territory sales executive without any service continuity having less favourable service conditions he did not accept the same inspite of the pressure exerted upon him by the first party management and informed the fact to the Industrial Court by way of an affidavit. Subsequently the management vide its letter Dt. 7-7-2003 transferred the second party workman from Cuttack to the Administrative Office of the company at Mumbai in its strategy and plan to procure and improve the business of the company. Since the aforementioned work in which he was proposed to be engaged is completely different from his earlier job profile and did not have any experience and skillness in the said work he protested against the said order vide his letter Dt. 19-7-2003 but the management vide its letter Dt. 7-8-2003 informed the second party workman that he has been marked absent since 15-7-2003. In reply the second party workman vide his letter

Dt. 29-8-2003 expressing his apprehension protested the action of the management. But the first party management vide its letter Dt. 11-9-2003 informed the second party workman that his designation and nature of duties have not been changed and simultaneously threatened him that unless he joins within two days he would relinquish his lien in service. Being apprehensive of any punitive action the second party workman along with two other similarly treated employees approached the Industrial Court at Mumbai in ULP 696 of 2003 challenging the legality of their transfer order and simultaneously obtained interim protection restraining the management from terminating their services without following the due process of law. Subsequently he was issued with a charge sheet by the management on 2-9-2005 with some false and baseless allegations and was asked to furnish written explanation within 48 hours and simultaneously decided to conduct enquiry against him. Since the charges were vague the second party workman sought for clarification from the management vide his letter Dt. 17-9-2005 so as to reply the charge framed against him and protested against the premeditative action of conducting the enquiry. In enquiry which was conducted without observing the principles of natural justice the second party workman was found guilty on three out of the five charges and was intimidated by the first party management vide its letter Dt. 1-9-2006 granting him seven days time to show cause as to why punitive action shall not be taken against him. The second party workman though submitted his reply on 30-9-2006 pointing out the infirmities in the enquiry and to grant him opportunity to properly represent the case the first party management vide its letter Dt. 31-10-2006 dismissed him from service with immediately effect.

4. The first party management in its written statement disputing the case on various points challenged the maintainability of the case on the ground that the second party is not a “workman” as defined under Section 2(s) of the Industrial Disputes Act, 1947 and further neither the Labour Officer, Cuttack nor the Industrial Tribunal, Bhubaneswar has got jurisdiction respectively for conciliation and adjudication of the case because of specific stipulation in the agreement between the parties that in case of any dispute between the company and its employees in connection with employment or any other matter, the Courts situated in the city of Bombay will have jurisdiction to try and entertain such matters and filed a petition for hearing on maintainability as preliminary issue.

5. In this case the second party workman does not challenge the terms and conditions of his service at the time of his appointment on 4-10-1993. The item No. 15 of the said terms and conditions relates to the jurisdiction of Courts situated in the city of Bombay alone to have jurisdiction to entertain any dispute between the parties. It is the case of the second party workman that on his transfer to Mumbai vide first party management letter Dt. 7-7-2003 when he protested apprehending any punitive action he along with two other similar situated employees approached the Industrial Court at Mumbai in ULP B No. 696 of 2003 challenging the legality and justifiability of their transfer order and obtained interim protection restraining the first party management from terminating their services. The aforesaid matter clearly speaks that the Courts in Bombay city alone have got jurisdiction to entertain any dispute between the parties.

6. On behalf of the second party workman emphasis has been given on the principle decided by the Hon’ble Supreme Court in *Bikash Bhushan Ghosh and others Vrs. M/s Novartis India Ltd.* and others reported in AIR 2007 SCW 2990. In the case in hand there is specific stipulation regarding

jurisdiction of the Court which is found absent in the case of Bikash Bhusan (*supra*). Therefore, I am of the view that the principle decided in the case of Bikash Bhusan (*supra*.) is not applicable in the present one. Hence, the District Labour Officer does not have jurisdiction to entertain the complaint and consequently the reference made on his report is bad in law and this Industrial Tribunal in Bhubaneswar has got no jurisdiction to adjudicate the dispute.

Hence, this case is not maintainable.

Dictated and corrected by me.

P. K. RAY  
1-10-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar.

P. K. RAY  
1-10-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar.

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By order of the Governor  
B. PRADHAN  
Additional Secretary to Government